

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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NXIVM CORPORATION,

Plaintiff,

vs.

11-MC-58

SHEILA COTE AND BARBARA BOUCHEY,

Defendants.  
-----x

Transcript of *Motion Hearing* held on  
August 17, 2011, at the James Hanley Federal Building,  
100 South Clinton Street, Syracuse, New York, the  
HONORABLE DAVID E. PEEBLES, Magistrate-Judge, Presiding.

A P P E A R A N C E S

For Plaintiff: O'CONNELL & ARONOWITZ LAW FIRM  
Attorneys at Law  
54 State Street  
Albany, New York 12207  
BY: PAMELA A. NICHOLS, ESQ.

For Defendants: SHEILA COTE, Pro Se  
BARBARA BOUCHEY, Pro Se

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Official United States Court Reporter  
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1 THE CLERK: NXIVM Corporation versus Sheila  
2 Cote and Barbara Bouchev; 11-cv-58. Counsel, please note  
3 your appearances for the record.

4 MS. NICHOLS: Pamela Nichols from O'Connell  
5 and Aronowitz for NXIVM Corporation.

6 THE COURT: Good afternoon. And for the  
7 respondents, is it Cote or Cote?

8 MS. COTE: Cote.

9 THE COURT: And Mrs. Bouchev?

10 MS. BOUCHEY: Yes, Your Honor.

11 THE COURT: I have cross-motions in this  
12 matter. The petitioner has requested that I enforce  
13 subpoenas that were issued for the depositions of the two  
14 respondents in connection with a matter pending in the United  
15 States Bankruptcy Court for the Western District of  
16 Washington. The respondents have cross moved before this  
17 Court seeking to quash those subpoenas.

18 Ms. Nichols, I'll hear you concerning the  
19 motion.

20 MS. NICHOLS: Thank you, Your Honor.

21 Your Honor, we have served two non-party  
22 subpoenas on Ms. Cote and Ms. Bouchev, and the Judge in the  
23 case in Washington has determined on several occasions that  
24 their testimony should be taken in the case with Susan Dones  
25 and Kim Woolhouse. In particular, there was an order issued

1 on June 8th where the Judge ordered that the depositions can  
2 go forward and the Judge actually laid out with specificity  
3 the documents that we seek to produce three days prior to  
4 deposing these non-party witnesses.

5 We recently had another telephone hearing last  
6 week where Judge Lynch ruled that he could not quash -- or,  
7 could not rule on the motions to quash the subpoenas but that  
8 he could make certain decisions pursuant to Rule 26, and he  
9 held that he would limit the depositions to four hours and  
10 that he would not allow a videotape of the depositions, court  
11 reporter only.

12 So, our position is we have a properly served  
13 subpoena. Ms. Cote and Ms. Bouchey have not shown any basis  
14 for this Court to quash the subpoena. The Judge on several  
15 occasions in Washington has found that the testimony is  
16 relevant to the Dones and Woolhouse bankruptcy, and we ask  
17 that you compel them to appear prior to the close of  
18 discovery, which is August 31st.

19 THE COURT: All right. Thank you. Before you  
20 sit down, one question I had concerns the documents that you  
21 are seeking. I'm looking for the document list. One of the  
22 issues appears to be telephone records. What telephone  
23 records do you look for and what redaction would be  
24 acceptable to the petitioner in this case?

25 MS. NICHOLS: Judge, the telephone records we

1 were looking for were the calls between the non-party witness  
2 and the parties to the bankruptcy proceeding.

3 THE COURT: Do you have specific telephone  
4 numbers? I assume telephone records just list telephone  
5 numbers and perhaps cities or areas. Are there specific  
6 telephone numbers that you have identified in connection with  
7 the debtors that would be those calls that you're looking  
8 for?

9 MS. NICHOLS: I believe we do have telephone  
10 numbers. To the extent there were other telephones used, I  
11 think the production was to have any records relating to  
12 those calls. I know there was some discussion at one point  
13 over whether there were cell phones used that people weren't  
14 aware of the phone numbers, so they're supposed to produce  
15 whatever calls went on between the parties and the  
16 non-parties, relying on some part in them knowing what the  
17 numbers are. But to the extent we have phone numbers, yes,  
18 it would be those phone numbers.

19 THE COURT: Over what span of time?

20 MS. NICHOLS: I believe the bankruptcy  
21 filing --

22 THE COURT: It looks like your subpoena says  
23 beginning July 1, 2008.

24 MS. NICHOLS: Yes, Your Honor. If that's what  
25 the subpoena says, that's what they discussed with the Judge.

1 THE COURT: To the date of production?

2 MS. NICHOLS: Correct.

3 THE COURT: I'm just looking at Judge Lynch's  
4 order. It doesn't specifically reference telephone records,  
5 does it? Although it does say documents to/from defendants  
6 related to or in each others respective lawsuits.

7 MS. COTE: Your Honor, my subpoena doesn't  
8 mention phone calls at all.

9 MS. BOUCHEY: Neither does mine.

10 THE COURT: Well, yes and no. Let's see. All  
11 documents -- this is number three on the list: All documents  
12 to/from defendants related to communications had with  
13 defendants regarding the above captioned matters, including,  
14 but not limited to, phone and text SMS message records  
15 beginning July 1, 2008. I think that's where the phone  
16 records are.

17 MS. BOUCHEY: Is that in the Court order?

18 THE COURT: No, that's in Exhibit A to  
19 Ms. Cote's.

20 MS. COTE: I have my Exhibit A here, and it  
21 doesn't say that at all, and this is what I was given by  
22 opposing.

23 THE COURT: Do you have a copy of the subpoena  
24 that was served?

25 MS. COTE: Yes, I do.

1 THE COURT: And your subpoena doesn't say what  
2 mine just said?

3 MS. COTE: Oh, the original -- yes, point  
4 three on this subpoena -- okay. Yes, okay.

5 THE COURT: Ms. Nichols, were both the  
6 subpoenas identical that were served on these two young  
7 ladies?

8 MS. NICHOLS: They should have been.

9 MS. BOUCHEY: That's why we're saying it's not  
10 showing up. I have the subpoena in their exhibit they've  
11 given us and it does not mention phone records.

12 MS. NICHOLS: I know at one point when service  
13 was being attempted there was an issue with whether the  
14 exhibit list was properly set forth and there was an amended  
15 subpoena that was given to the process server. So it may  
16 have been that's why you have two different ones, because  
17 service was attempted and then service was ultimately made.

18 THE COURT: And the reason for my confusion is  
19 that I didn't find anywhere in the submissions of either  
20 party the full subpoena to Ms. Bouchee. I see the subpoena  
21 in the portion related to service but the attachment wasn't  
22 with it. Ms. Cote's was.

23 MS. NICHOLS: They should be identical, yes.

24 THE COURT: All right. Let me hear from the  
25 respondents as to why I should not order their depositions.

1 MS. BOUCHEY: Your Honor, I'll go first.

2 THE COURT: Okay.

3 MS. BOUCHEY: I just wanted to clarify some of  
4 my understandings which seem to differ with Ms. Nichols. My  
5 understanding from the Judge is that he doesn't have  
6 jurisdiction to --

7 THE COURT: Well, I'm sorry to interrupt, but  
8 I can understand your confusion and here's the way it  
9 normally works. If the case is pending in my court, I have  
10 jurisdiction over the parties, and to the extent the parties  
11 desire to engage in discovery anywhere concerning the case, I  
12 have control over that, and in the first instance have to  
13 make the determination of such things as relevance, burden,  
14 whether the material sought is privileged. Even though it  
15 may seek discovery somewhere else.

16 I don't have jurisdiction over the person  
17 somewhere else, a non-party, but I do have jurisdiction over  
18 the people in front of me. So Judge Lynch had jurisdiction  
19 over the defendants in his case and NXIVM. And so in that  
20 case he ruled that the information that is being sought from  
21 you by deposition and by subpoena, subpoena for documents, is  
22 potentially relevant and then he limited, meaning he ordered  
23 NXIVM not to videotape your deposition, to limit it to four  
24 hours. He had jurisdiction to do that.

25 What he didn't have jurisdiction to do is to,

1 A, enforce the subpoena to require your presence at that  
2 deposition; and B, to quash the subpoena in the first  
3 instance. I have jurisdiction to do that because the  
4 subpoena was issued out of this Court.

5 MS. BOUCHEY: That makes sense.

6 THE COURT: So that's how it works.

7 MS. BOUCHEY: Thank you. That makes sense.  
8 So then bearing that in mind, because you said that far more  
9 eloquently than I did.

10 THE COURT: I don't know if it was very  
11 eloquent, but hopefully it was understood.

12 MS. BOUCHEY: More concise and understood.  
13 Ms. Dones has provided her phone records already and the only  
14 phone that I've ever called her from was my cell phone, so in  
15 fact they have those phone records. For me to produce phone  
16 records going back, and I don't even understand why it goes  
17 back to 2008 because we didn't resign until 2009, but it's a  
18 lot to produce when they already have them.

19 THE COURT: And let me say one other thing.  
20 You can't be forced by subpoena or if you were a party by  
21 Rule 34 document demand to produce documents that are not  
22 within your possession, custody or control. So you can't be  
23 forced to go to your carrier -- well, I suppose there is an  
24 open issue as whether they're within your possession, custody  
25 or control. But at the outset, it's not my intention to



1 force you to go to your carrier, Verizon or whoever, and  
2 request those records. I certainly would hear Ms. Nichols as  
3 to why I should do that. But if you have phone bills in your  
4 possession, custody or control that contain this information,  
5 then even though it's been produced through another source, I  
6 think you still have an obligation to produce it in redacted  
7 form so that it didn't identify other phone numbers that you  
8 called or called you and so forth.

9 MS. BOUCHEY: In another litigation where  
10 NXIVM has issued subpoenas to me, I had in my possession  
11 phone records that began like the end of 2009.

12 THE COURT: 2000 and?

13 MS. BOUCHEY: Nine. I think it was like  
14 November, 2009, somewhere around there. And that's what I do  
15 have in my possession. I don't have anything prior to that.  
16 So, I guess -- so, I guess what you're saying is that it is  
17 possible that you deem that there is a relevancy to producing  
18 phone records possibly as it relates to the parties, meaning  
19 Susan Dones and Kim Woolhouse, and that we redact everything  
20 else.

21 THE COURT: Yes.

22 MS. BOUCHEY: Insofar as the deposition, it  
23 also sounds like you're indicating that there seems to be  
24 some relevancy and that you would be of the mind-set to allow  
25 that deposition to occur as well.

1           THE COURT: Yes. And here's why. Judge Lynch  
2 obviously is far more familiar with the case than I am. I've  
3 learned somewhat about it from the party's submissions. It  
4 sounds like an intriguing case. But it's Judge Lynch who  
5 knows what the issues are and is in a best position to make  
6 an assessment of relevance. And in my mind his June 8, 2011  
7 order clearly shows that he feels that the information being  
8 sought from you and Ms. Cote is relevant to the claims and  
9 defenses in the case and, frankly, I'm not going to  
10 second-guess that determination. Because he knows more about  
11 the case than I do.

12           MS. BOUCHEY: Okay. Well, so then I think the  
13 only remaining item that I would like to discuss and to have  
14 some consideration with is that there is a lot of balls up in  
15 the air right now with this case. Susan Dones has expressed  
16 to me that there are mediation and settlement offers, and  
17 that she was contemplated either a settlement offer and/or a  
18 permanent injunction, which, number one, would make any  
19 deposition with us not necessary and/or irrelevant.

20           Secondly, NXIVM recently withdrew their  
21 monetary damages and it seemed to me that the Judge was  
22 concerned about that and possibly sanctioning them or things  
23 of that nature, and so he set a hearing for August 31st to  
24 address that issue to see what cause of action and/or how  
25 they would proceed from that point. So a request that I

1 would make is if Your Honor does deem to go with the limited  
2 four hour deposition and limited phone records, that is it  
3 possible that those depositions not be taken until, say,  
4 September 1st and/or 2nd to allow time for completion of  
5 certain balls in the air out there that are going on.

6 And although the Judge did indicate that  
7 discovery ends August 31st, the trial is not slated until the  
8 end of September, and he did say that he could extend  
9 discovery to take our depositions, and I think that waiting a  
10 day or two until after August 31st certainly in a grand  
11 scheme of things isn't going to alter their ability to  
12 navigate their trial which is slated the end of September.

13 So I would just like to respectfully request  
14 that we allow that August 31st hearing to take place because  
15 I've been dragged into ten litigations, I've spent 400,000 in  
16 legal fees, I've been driven into bankruptcy. For me this  
17 has been pure harassment and abuse, and I've been deposed  
18 forty hours by them already in four depositions. They've  
19 already asked me 400 questions about the resignation letter,  
20 130 questions about Susan Dones. I've been drilled  
21 extensively on this topic. It cost me a lot of money to  
22 bring an attorney with me and I am broke right now. For me  
23 this is not a small minor thing. They have two lawsuits  
24 against me right now, both NXIVM and their affiliate the  
25 Bronfmans, and combined between the two it's six lawsuits and

1 I've been fighting this for two years. So for me this is not  
2 just, oh, just go be deposed for four hours. I need to have  
3 legal counsel because they then twist my testimony and they  
4 assert it in their other litigations including against me and  
5 other people, and so it's a very big thing for me.

6 So if I could just possibly have some  
7 consideration to be deposed like on September 1st or the 2nd  
8 and see how it plays out in Seattle, that would be a request  
9 that I would make.

10 THE COURT: If the case were pending before me  
11 and I were in control of the deadlines, I would say that what  
12 you're proposing sounds reasonable, but my concern is that  
13 the Bankruptcy Judge has set discovery deadlines, has  
14 extended the discovery deadline, and it currently doesn't  
15 permit discovery beyond August 31st.

16 MS. BOUCHEY: But he did during the hearing  
17 last week, he did indicate that he would. I can provide the  
18 court transcript. And I can always write a letter to the  
19 Judge requesting possibly as you just suggested maybe lay it  
20 out for him and make the suggestion that the deposition be  
21 taken maybe September 1st or 2nd and see if he would permit  
22 that. So if he were to permit that, could that be a  
23 condition that you would follow suit on should that be within  
24 your domain?

25 THE COURT: Ms. Nichols?

1 MS. NICHOLS: I would like to respond. Judge,  
2 what I asked the Judge during that telephone hearing was that  
3 if indeed, since he said he had no jurisdiction, a motion to  
4 quash was brought with a return date outside of the discovery  
5 deadline, if he would be amenable to an extension of his  
6 discovery deadline, and he said I'm not going to hurt the  
7 NXIVM's case because a non-party brings a motion for to  
8 quash, so I would therefore take that into consideration at  
9 the time.

10 He didn't rule that he was going to extend the  
11 discovery deadline. He also suggested that on behalf of  
12 Ms. Woolhouse and Ms. Dones that the better route would be to  
13 move as quickly as possible to afford them the speedy trial  
14 in bankruptcy that he believes they're looking for.

15 So these motions were brought. We're here on  
16 the 17th, which is plenty of time. I don't think, number  
17 one, the case hasn't settled. There have been mediations and  
18 settlement discussions for a long time going on, and I don't  
19 think that the NXIVM should lose their position in  
20 negotiating a settlement by not completing discovery. I  
21 mean, the suggestion is let us not give you all the  
22 information to get a discovery and hold you to your discovery  
23 deadline and then we'll come in after. NXIVM doesn't want to  
24 do that. They want their discovery now before discovery  
25 closes. It's pertinent to the case. The information that

1 Ms. Cote and Ms. Bouchey have is extremely relevant to this  
2 litigation. It goes directly to the issues involving  
3 Ms. Dones and Ms. Woolhouse. And we'd like to wrap it up by  
4 the discovery deadline.

5 THE COURT: Is the information that you seek  
6 to elicit from the depositions necessary for you to  
7 participate in the hearing that apparently is scheduled for  
8 August 31st?

9 MS. NICHOLS: The August 31st hearing has to  
10 do with the withdrawal of the monetary damages and whether  
11 certain documents should be produced or should have been  
12 produced related to that. The injunctive relief is  
13 proceeding, the injunctive relief sought by NXIVM. The  
14 issues that Ms. Cote and Ms. Bouchey will be testifying about  
15 directly relate to the breach of the confidentiality  
16 agreement, whether there should be a permanent injunction,  
17 they're on the issue of the injunctive relief. So the  
18 hearing on August 31st has nothing to do with the issue that  
19 they will be testifying about.

20 THE COURT: But for some reason they feel that  
21 they will know more on September 1st than they would on  
22 August 31st as to whether or not this case, the underlying  
23 case is going to settle and their deposition may or may not  
24 be necessary. And I guess my question to you is, it doesn't  
25 seem -- I could order the deposition on August 31st. To

1 order it instead on September 1st or September 2nd, I'm  
2 wondering how that will prejudice your client, assuming that  
3 Judge Lynch would be willing to extend the discovery  
4 deadline. It doesn't seem that a day or two difference would  
5 affect the trial schedule. So I'm trying to understand how  
6 it will prejudice your client.

7 MS. NICHOLS: Judge, it won't affect the trial  
8 schedule. It just has -- that delay has no relevance to  
9 their issue of being deposed in this case. I mean, to stand  
10 here and say, you know, give us until two days later so Susan  
11 Dones can try to effectuate a settlement, it hasn't settled  
12 so far. A permanent injunction has been out there for her  
13 for a year and the case hasn't settled on a permanent  
14 injunction. So for these two non-party witnesses, what does  
15 it get them to wait two days, when actually I think it does  
16 prejudice NXIVM because we want to close our discovery. To  
17 the extent that we are in negotiation, we would like to have  
18 all the information. We would like the -- in fact, this has  
19 been out here since May, and we would like to know all the  
20 facts.

21 I don't know, for NXIVM to -- actually, it may  
22 hinder settlement because NXIVM would like to know what the  
23 facts are before they engage in settlement negotiations with  
24 Ms. Dones and Ms. Woolhouse, and I think Judge Lynch  
25 recognized that when he said please do everything

1 expeditiously so that we can go to our speedy trial and wrap  
2 this up. That hearing on August 31st has nothing to do with  
3 this, nothing.

4 MS. BOUCHEY: Your Honor, could I just say a  
5 few more words?

6 THE COURT: Sure.

7 MS. BOUCHEY: Are you done?

8 MS. NICHOLS: Yes.

9 MS. BOUCHEY: Your Honor, I can appreciate  
10 their position that whatever information might be gained from  
11 deposing me might be pertinent to the case. What is being  
12 overlooked right now is that NXIVM has deposed me already  
13 four times and has asked me --

14 THE COURT: 400 questions.

15 MS. BOUCHEY: Just on the resignation letter.  
16 Just on the resignation. 137 questions on Susan Dones, 97  
17 questions on the media, 65 questions on -- I mean, they know  
18 all the information from me. They have all the facts from  
19 me.

20 THE COURT: How about Ms. Cote, have they  
21 deposed her?

22 MS. COTE: Well, I can speak to that.

23 MS. NICHOLS: Actually, can I just respond to  
24 that.

25 THE COURT: One at a time. The court reporter



1 can only get one.

2 MS. NICHOLS: One non-party.

3 MS. BOUCHEY: Just a couple more things.

4 Number one, I don't believe that there is anything that  
5 they've left to learn from me that they haven't already  
6 learned. And I've been drilled quite extensively.

7 Secondly, it is really significant because  
8 Susan Dones, based on what my understanding is, is the first  
9 time a permanent injunction was offered with some kind of  
10 tangible language was in the last few weeks, is the first  
11 time that I heard her speak since they launched the lawsuit  
12 in November, so it hasn't even been a year, it's been eight  
13 months. This is the first time I actually heard Susan Dones  
14 actually speak that she is considering and that she is  
15 considering the permanent injunction, which has new -- which  
16 was just offered in the last few weeks with certain  
17 conditions that she says she is considering.

18 So I think that, you know, I think that she is  
19 in a different place and I think their whole case is in a  
20 different place and I do think that it could possibly create  
21 some kind of settlement. So I think that it won't delay the  
22 trial. They have all the information they need from me, and  
23 Sheila will speak to herself. But I think a day or two, if  
24 the Judge out there is okay with it, I don't think hinders  
25 them, but it would be hugely beneficial for me time-wise,

1 emotion wise, abuse wise and legally money wise, so it is  
2 significant for me, and thank you.

3 MS. NICHOLS: Judge, I didn't know Ms. Bouchey  
4 and Ms. Dones discussed her settlement proposal.

5 MS. BOUCHEY: No.

6 MS. NICHOLS: I am not aware that Ms. Dones is  
7 everything anything in a settlement. I mean, this is being  
8 portrayed as don't depose me because Ms. Dones is going to  
9 settle. My client does not have that indication right now.  
10 So I'm not privy to their conversations. I don't think  
11 that's a basis to put it off that a non-party is representing  
12 that a party is going to agree to a permanent injunction.

13 As far as all the depositions, and I do feel  
14 that I need to address this, NXIVM has one action pending  
15 against Ms. Bouchey right now in state court. It was a  
16 result of her bankruptcy case being dismissed due to  
17 untruthful information that she provided to the bankruptcy  
18 court. The bankruptcy court had an injunction on Ms. Bouchey  
19 because they had to dismiss their bankruptcy court, her  
20 bankruptcy case, the Court gave us time to go to state court  
21 to get an injunction in state court, which we did and we  
22 have, and that's the only action pending against Ms. Bouchey  
23 by NXIVM.

24 NXIVM has not deposed her except to the extent  
25 that she has offered herself to several adversaries of NXIVM

1 as a witness against NXIVM during her bankruptcy, with no  
2 money left flew herself out to California to testify against  
3 them voluntarily in court and claims I'm harassed. The only  
4 time NXIVM tries to then get a deposition is to follow up on  
5 the questioning because the adversaries use an entire day  
6 deposing her and now it's NXIVM's turn and she never comes  
7 back for her deposition and we have to come back to court.

8 This is not a person that NXIVM has harassed,  
9 sought to depose fifty times. She has chosen to inject  
10 herself into their cases for their adversaries despite the  
11 fact that she was an executive board member, and this is all  
12 a result, which is what Dones case is about, of a letter in  
13 2009 when Ms. Dones and Ms. Woolhouse and Ms. Bouchey and  
14 Ms. Cote sent a letter to NXIVM saying pay us \$2.5 million or  
15 we will go to the press. They were not paid \$2.5 million and  
16 the barrage started.

17 And I can't stand here and listen to this, you  
18 know, I'm harassed, I'm the martyr, NXIVM is doing this to  
19 me. And now to use the deadline as a way to help Ms. Dones  
20 negotiate a settlement is just wrong. We have a deadline.  
21 We're entitled to our deposition. Judge Lynch asked to  
22 complete it by the 31st if we can, and I'm asking that we  
23 please do that. And whatever settlement comes out before the  
24 end of September comes out.

25 THE COURT: Ms. Cote, you wanted to say

1 something?

2 MS. COTE: Um, I'll only speak to my own  
3 situation here, and please excuse me, I'm very nervous, I've  
4 never done this before. But I'm going to try to do my best  
5 to present what I have to say about this.

6 Ms. Nichols mentioned earlier that Judge --  
7 you mentioned Judge Lynch's decision to grant the subpoena  
8 based on relevancy. However, I believe that I have  
9 represented in my motion to quash that the relevancy that  
10 they presented was based on gross misrepresentations. And I  
11 believe I provided the Court with backup information to prove  
12 that what they're alleging my involvement was or who I am as  
13 a person is completely incorrect. And so based on that, I  
14 believe that if it's really examined what I presented, it's  
15 clear that I'm not involved and should not be deposed.

16 Also she also said that there isn't any basis,  
17 I haven't shown any basis for not being deposed, which is  
18 completely untrue. I've presented it to both courts,  
19 incorrectly to the first. I wasn't aware of where I needed  
20 to file my motion. I have no knowledge or relevancy of Susan  
21 Dones or Kim Woolhouse's relationship with their  
22 confidentiality agreement with the company with NXIVM, and I  
23 have absolutely no reason why they would want to sit me down  
24 in a room and ask me questions as a third party because I  
25 attended two meetings to discuss what the founder of an

1 organization, certain things that I thought were -- weren't  
2 upholding of my values, and what's important to me and being  
3 involved in a company that proposes to be an ethics building  
4 company, so I went out of concern for the company. So that's  
5 being misrepresented.

6 I also was not a signatory to the letter. My  
7 name was -- the resignation letter. And I have a signed  
8 affidavit from the person who gave permission to put my name  
9 on that letter when in fact I didn't sign that letter at all  
10 and I wasn't there for the drafting of it. I had resigned a  
11 year earlier. And I also have presented that to the Court as  
12 evidence that I wouldn't have signed a resignation letter  
13 busy resigned a year earlier.

14 So, the reason that I believe that they're  
15 dragging me in has absolutely nothing to do with anything  
16 other than an attempt to extract information out of me, to  
17 threaten me, to harass me, to keep me quiet, and that's --  
18 also, I would like to also speak about the delay. You know,  
19 there is like this rush now for them to get us deposed. They  
20 have permission from the Court originally from Judge Lynch.  
21 They waited thirty days to serve my first subpoena on me,  
22 thirty days, and then they waited another week after the  
23 first one. So that to me, that brings a question in my mind  
24 as to, you know, if my deposition is that relevant and it's  
25 so crucial, like why would you wait thirty days to serve

1 someone and then all of a sudden it's urgent.

2 And also, aside from all of that, I also have  
3 some information that in February I made reservations to go  
4 on a family camping trip. I know this may seem insignificant  
5 to you, but it's not to me. The 21st of August, the Sunday,  
6 to the 28th I have plans to be with my family, that would  
7 leave only tomorrow or Friday to be deposed, which I don't  
8 believe is enough time for me to find counsel, educate  
9 counsel, find ways to pay for counsel, and to provide them  
10 with the documents that they want.

11 And I feel that it would be equally  
12 appropriate for me, if you deem it appropriate for me to be  
13 deposed, that it be done after the hearing on the 31st. It  
14 would burden me financially, emotionally, mentally to have to  
15 pull this off. And it may even be unnecessary. After the  
16 31st it may even be unnecessary. So I'm asking for the Judge  
17 to take this into consideration in my case. And I guess  
18 that's all I have for now. Thank you.

19 THE COURT: Thank you, Ms. Cote. Anything  
20 further?

21 MS. NICHOLS: I don't know if you want  
22 response or not, Judge, but just two quick things on the two  
23 meetings. I don't know if you're going to get into the  
24 relevance, but the two meetings that Ms. Cote participated in  
25 are actually a critical part of the underlying Dones and

1 Woolhouse case, which is really why Judge Lynch ruled that  
2 her testimony is relevant and her name is on the attempted  
3 extortion letter. So to the extent that when I read her  
4 affidavit, a lot of the information that she lays out denying  
5 in the affidavit is actually the information that we're  
6 seeking to explore at the deposition, so I think the  
7 relevance is established.

8 I would not ask that she cancel a family  
9 vacation but I would like to proceed. Again, I don't  
10 think -- this August 31st date is not a settlement date, it's  
11 not about a settlement. It's about a damage claim and where  
12 that's going to go. So I can't make the connection between  
13 that date and their deposition. I would ask that we proceed  
14 with the deposition. The 28th is -- well, we could go the  
15 31st, proceed with the deposition on the 30th and 31st. I  
16 don't have a calendar; I don't know what day of the week it  
17 is.

18 THE COURT: Tuesday and Wednesday.

19 MS. NICHOLS: Tuesday and Wednesday. Thank  
20 you.

21 THE COURT: All right.

22 MS. BOUCHEY: Your Honor, I would just like to  
23 clarify a few things on the record in regards to what  
24 Ms. Nichols said about me. The \$2 million that was in the  
25 letter is money that's rightfully owed to me by the founder

1 Keith Raniere who he lost in a commodities account that he  
2 lied to me about. It's legitimate, there is legitimate  
3 paperwork on it and it's not extortion, that's a complete  
4 gross misrepresentation.

5           Furthermore, I don't enjoy these depositions.  
6 I would never voluntarily show up for any one of them. I  
7 fought each one. Within one month of my quitting I was  
8 deposed in one of the Bronfman's litigations because I was  
9 their financial planner, and within that deposition their  
10 attorney, which is also NXIVM's attorney, pretty much tried  
11 to allege and frame me for all of their mishaps. I was  
12 terrified and frightened and they've been doing it ever  
13 since, trying to blame me for their problems and their  
14 misgivings and using it as an illusion to present to the  
15 courts that I'm working against their adversaries. I've  
16 never aligned myself with their adversaries. I don't  
17 voluntarily go to any of those depositions and I only go as  
18 evidenced here because I'm required and forced to. They're  
19 not pleasant, they're traumatizing.

20           And I am a financial planner who was  
21 independently wealthy ten years ago and could have retired,  
22 and I just filed bankruptcy and I can't even get a car loan.  
23 I assure you I would have never voluntarily done that in my  
24 life. And my reputation as a financial planner has been  
25 ruined for the rest of my life. I don't try to be a victim



1 but there is no doubt that what they've been doing to me for  
2 the last two years is trying to silence things that I know  
3 about the founder, of his conduct that are highly improper  
4 and inappropriate, and should the general public or the  
5 members of NXIVM know really what he is like and what he does  
6 behind closed doors, they would not be affiliated.

7 So what this is really about is trying to  
8 intimidate and silence, which they've done a really good job  
9 of over the last two years, from the general public finding  
10 out the true nature of the founder and his inner circle. And  
11 it's been alleged in the cult world as one of the top five  
12 most dangerous cults based on their conduct and behavior.

13 So, there is a lot in the big picture here,  
14 and all I'm asking for is one day to September 1st to allow  
15 things to complete out there in Seattle, which could make a  
16 difference in my life. And the things that are being said  
17 are just completely ridiculous and absurd.

18 THE COURT: This doesn't really have anything  
19 to do with my ruling, but just out of curiosity, can someone  
20 tell me, Ms. Nichols, what NXIVM is and does?

21 MS. NICHOLS: Sure. NXIVM is a company that  
22 works toward human potential. They have training courses,  
23 which is really the subject of the Dones and Woolhouse case.  
24 Before a student comes to NXIVM, they have to sign a  
25 confidentiality agreement because the essence of the business

1 is really the training manual and the training courses and  
2 they work with people toward their highest human potential  
3 and ethical behavior. And the issue that has come out is  
4 once Ms. Dones, Ms. Woolhouse, Ms. Cote and Ms. Bouchey and  
5 others decided to leave NXIVM and try to obtain the 2 and a  
6 half million dollars or go to the press, they then breached  
7 their confidentiality agreement by placing all of the  
8 materials and data related to NXIVM into the public, in  
9 violation of their confidential agreement.

10 MS. COTE: For which modality? Where is your  
11 evidence of that?

12 MS. BOUCHEY: That's not true.

13 THE COURT: One at a time, please.

14 MS. NICHOLS: I would be happy to respond.  
15 Ms. Bouchey gave an interview with Vanity Fair in her home.  
16 Ms. Bouchey speaks with Jim Odatto, who is a reporter with the  
17 Times Union on a regular basis, and he runs his articles. I  
18 mean, the threat for the 2 and a half million dollars has  
19 been carried out. There has been nonstop press. And  
20 actually, to the extent it's the five most dangerous cults in  
21 the world it's due to Ms. Bouchey telling the press that. So  
22 the case has really started as a result of NXIVM refusing to  
23 pay the 2 and a half million dollars that's rightfully owed,  
24 yet in five lawyers that have represented Ms. Bouchey, no one  
25 has ever sued for the money, no one has ever claimed they owe

1 the money. And NXIVM certainly, as I believe Ms. Bouchey has  
2 said, does not owe her the money. So to threaten to go to  
3 the press about NXIVM if the money's not paid is an attempted  
4 extortion and she carried it out. So --

5 THE COURT: I opened a Pandora's box.

6 MS. NICHOLS: You did. And Judge, I just have  
7 to say this again, she has voluntarily placed herself with  
8 our adversaries and the press since April of 2009, and it  
9 is -- I would love to have this under oath because it really  
10 is untrue that she has not done that. There have been -- I  
11 could send you the transcripts, but there were meetings where  
12 she was supposed to testify because she was in with NXIVM,  
13 she met with NXIVM's lawyers before her deposition, and she  
14 handed herself to lawyers on the other side in total breach  
15 of her fiduciary responsibility to NXIVM. I realize she  
16 left, but that fiduciary responsibility carries on. And  
17 Ms. Dones and Ms. Woolhouse were part of the scheme and that  
18 really is the issue of what we're getting to in that case.

19 THE COURT: All right.

20 MS. BOUCHEY: Your Honor, NXIVM is about human  
21 potential but it's a psychological program to work your life  
22 issues, and if you don't work them, there is serious problems  
23 and then abuse begins to occur. So, with all due respect, I  
24 don't even know if Ms. Nichols even has taken a workshop to  
25 even understand, it's a mini Scientology. That's the essence

1 of it. Not to say that some of the workshops aren't good.  
2 Obviously I was involved for years. But it takes an  
3 understanding of when you become someone who is committed,  
4 then the way they treat you is completely different than the  
5 way they treat Johnny-come-lately that comes in.

6 As far as what Ms. Nichols is saying, in the  
7 last two years, I gave one interview, one year ago, one year  
8 after I quit, to Vanity Fair and to the Times Union, and what  
9 I talked about was the personal abuse because they've been  
10 abusing me for two years. I have a right to say someone  
11 somewhere needs to stop this, it's simply not okay. I didn't  
12 reveal their alleged trade secrets of their secret human  
13 potential to your highest ideal program. No one even cares  
14 about it. I wasn't even allowed in their financial office.  
15 I know nothing about their financials. I don't need to talk  
16 to anybody about that.

17 My only goal was a year ago Vanity Fair was  
18 running a story whether I gave an interview or not, and I was  
19 advised by my counsel that it might be best for me to at  
20 least share a little bit about my side of the story of what I  
21 perceived was the abuse while I was there and afterwards, and  
22 that's all I spoke to. I didn't speak about their  
23 confidentiality information. That's the guise that they're  
24 using to continually come after me and use me as an example  
25 to any single person who knows the secrets within NXIVM that

1 they don't want revealed, that I assure you would be quite  
2 troubling to society as it was troubling to us as we  
3 uncovered it.

4 And most likely, Ms. Nichols doesn't even know  
5 about those things because they're really very good at  
6 keeping it very secretive and they use all this other talk to  
7 go on with it. And I did speak to a NXIVM attorney the night  
8 before I was deposed, because my attorney spoke to their  
9 attorney and he said in my world they're getting ready to  
10 frame you, so you do need to speak to the adversary's  
11 attorney in my office for a half hour before you're deposed  
12 tomorrow because you need to open up your eyes what they're  
13 getting ready to do to you tomorrow in that deposition. And  
14 that's the only reason that I met with that attorney the half  
15 hour before the deposition. So this is just outrageous.

16 MS. NICHOLS: I'm sure my --

17 THE COURT: I heard enough. I'm sorry I asked  
18 the question.

19 MS. BOUCHEY: Well, you probably -- it is an  
20 intriguing story, Your Honor.

21 THE COURT: It is. And I've appreciated the  
22 thorough submissions and I've read them, I guarantee you,  
23 from cover to cover with great interest.

24 I have before me cross-motions regarding  
25 deposition subpoenas that were issued, including requirement

1 of production of documents under Rule 45 of the Federal Rules  
2 of Civil Procedure out of this Court. My first inquiry is  
3 whether they were properly served, and I found that they  
4 were. I then have to determine the question of relevance,  
5 whether the information and materials being sought is  
6 relevant under Rule 26 of the Federal Rules of Civil  
7 Procedure, which provides for discovery that is extremely  
8 broad and seeks information that is relevant to the claims or  
9 defenses of a party in a case.

10 Judge Lynch, who is far more familiar with the  
11 merits of the underlying adversary proceeding than I, has  
12 made a determination of relevance, and I'm going to follow  
13 that and find that the dimension of the documents being  
14 sought are relevant.

15 The defendants have argued burden, the burden  
16 of proof to establish burden under Rule 26(c) of the Federal  
17 Rules of Civil Procedure is on the deponents, the parties  
18 seeking to avoid or quash the subpoena. I find that that  
19 burden was not carried in this case. The information that  
20 you discussed is precisely the type of information that the  
21 law allows the adversary to seek. If you truly are not  
22 involved and do not have any relevant information, then that  
23 will come out in the deposition.

24 Judge Lynch has set reasonable limitations to  
25 the deposition, four hours in each case, and I will adhere to

1 those, as well as the limitation that the depositions not be  
2 videotaped.

3 I will order the depositions to occur on or  
4 before August 31st, because I have no jurisdiction to extend  
5 the discovery deadline in a case that's not pending before  
6 me, unfortunately. That having been said, let's discuss  
7 deposition dates and where the depositions will be held. Are  
8 you both available -- well, Ms. Nichols, can they both be  
9 held on the same day or would you prefer two separate days?

10 MS. NICHOLS: I would prefer two separate  
11 days.

12 THE COURT: Can you be available on the  
13 30th and/or the 31st?

14 MS. BOUCHEY: Yes, Your Honor.

15 THE COURT: That should be after your  
16 vacation.

17 MS. COTE: I would say the 31st, that would  
18 give me enough time to find an attorney.

19 MS. BOUCHEY: And the 30th would be best for  
20 me because a lot of times there are hearings on Wednesdays.

21 THE COURT: Perfect. See how that worked out?

22 MS. BOUCHEY: Well, it didn't, but I can  
23 appreciate.

24 THE COURT: 8/30 for Ms. Bouchee, 8/31 for  
25 Ms. Cote. Where, offices of O'Connell & Aronowitz?

1 MS. NICHOLS: Yes, Your Honor, please.

2 THE COURT: And I assume that's as convenient  
3 as anywhere else for you folks and it's not unduly far from  
4 where you reside or do business. What time?

5 MS. NICHOLS: Well, I'm thinking on the 31st,  
6 I don't know what time the hearing is because Ms. Dones and  
7 Ms. Woolhouse will have to be at that hearing in Seattle, so  
8 they'll be on the phone for the deposition. So I would say  
9 early, that should be fine, I think maybe 8 or 9:00.

10 THE COURT: 9:00, does that work?

11 MS. NICHOLS: If their hearing is at 10  
12 Seattle time, it's one our time, so we need to wrap up. I  
13 think 8:00 would be safer for four hours.

14 THE COURT: I know the traffic situation in  
15 Albany stinks.

16 MS. NICHOLS: Listen, I'm not a morning  
17 person, but I'm just thinking if she has to be on the  
18 telephone and then get to the courthouse for a hearing at  
19 one, I don't have Judge Lynch's order what time that hearing  
20 is.

21 MS. COTE: Well then we'll just make it a  
22 three hour deposition.

23 THE COURT: Does anyone know what time the  
24 hearing is on the 31st?

25 MS. BOUCHEY: No. But my suspicious is I've



1 never seen them before 10:00 in the morning.

2 MS. NICHOLS: It won't be before 10.

3 MS. BOUCHEY: That makes it 1:00.

4 THE COURT: Let's start at 9 and hopefully you  
5 can get through it, and hopefully there won't be any  
6 controversy that will extend it or prolong it. You can get  
7 the questions asked and answered in an orderly fashion and  
8 because if there are any problems, objections or disputes,  
9 you know in my view that doesn't count against the four  
10 hours. You've been deposed before so I don't envision any  
11 problems. I mean, I take a pretty strict view in terms of  
12 depositions and refusing to answer. I take the view that  
13 it's improper to refuse to answer a question unless it calls  
14 for attorney-client privilege, the material is something of  
15 that nature where if the answer is given it can't be undone.  
16 But if you feel that a question seeks information that is not  
17 relevant, it's not really a proper basis for you to refuse to  
18 answer, you can place an objection on the record and say that  
19 you object to the form of the question. But other than that,  
20 the deposition hopefully will go smoothly.

21 MS. BOUCHEY: Your Honor, in regards to mine,  
22 the Judge did insert language in mine due to my having been  
23 extensively deposed previously that they could not wander  
24 with their line of questioning and make it a fishing  
25 expedition, that they had to adhere strictly to the matters

1 relevant to the case. It's written in the order.

2 THE COURT: I didn't see it in there, but  
3 let's assume it is, that doesn't give you a basis to say I'm  
4 not going to answer that, you're fishing. In my view you  
5 should answer the question. If you believe that the  
6 deposition is getting to a point where it is burdensome or  
7 oppressive, and it's a very high standard, you can request  
8 the deposition to be adjourned and you can contact the Court,  
9 me, for a ruling. But I can tell you depositions, because  
10 they're not typically -- in most cases they're not offered  
11 from front to back at trial. Now they may be in this case,  
12 they may not. But a deposition is much broader than a trial  
13 in terms of whether or not a question's proper, whether it  
14 seeks information that is admissible. Very often depositions  
15 seek information that is not admissible but can still be  
16 discoverable.

17 So, I guess what I'm encouraging you to do is  
18 it will be easier for everyone if you don't try to make your  
19 own assessment of relevance and answer the questions or  
20 refuse to answer the questions on the basis of your  
21 determination of relevance, because I might be pretty upset  
22 with you if you do that.

23 MS. BOUCHEY: I'll take it into consideration.  
24 I mean, if you sat in these depositions when we're asked  
25 things the way they've been asked of me, my last deposition

1 in the Ross case the Judge issued a protective order for me,  
2 required them to depose me in his chambers so that he could  
3 actually be present due to some of the previous harassment  
4 and line of questioning that really was fishing. So there is  
5 evidence that judges have had to make allowances to protect  
6 me and/or to keep things on track. And so, you know, I'm  
7 usually very agreeable in the depositions and answering,  
8 however, there is a pattern and so I will do my best.

9 THE COURT: Well, I have to act on the  
10 assumption that I'm dealing with professional counsel, a firm  
11 that I am familiar with has appeared in this Court before, I  
12 have to assume that their intentions are honorable and that  
13 they will do their job professionally and civilly, unless I'm  
14 convinced otherwise. If I'm convinced otherwise, then I will  
15 obviously have a problem with that.

16 But I'm going to attach to the order that will  
17 direct you to appear for these depositions my standard  
18 deposition instruction sheet that will hopefully help both  
19 sides understand the parameters that I expect to be followed  
20 at a deposition.

21 MS. BOUCHEY: Okay.

22 THE COURT: So, we've established the when,  
23 the where, the time. So I think the only thing I need to say  
24 is that I'm granting petitioner's motion to compel and  
25 denying respondents' motions to quash. I'm not going to

1 order costs or attorneys fees to be awarded to any party, and  
2 I will issue a written order memorializing this ruling, which  
3 you'll receive copies of. Do we have your correct addresses  
4 on the docket sheet?

5 MS. BOUCHEY: Yes, Your Honor.

6 THE COURT: 5 Robin Hood Court.

7 MS. COTE: Yes.

8 THE COURT: And 19 Kempton Place, Apartment 8.

9 MS. BOUCHEY: Thank you, Your Honor.

10 THE COURT: Excellent. Thank you all. Have a  
11 good afternoon. Safe trip back to Albany.

12 THE CLERK: Court's adjourned.

13 \* \* \*

C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Official Court Reporter in and for the United States District Court, Northern District of New York, DO HEREBY CERTIFY that I attended the foregoing proceedings, took stenographic notes of the same, and that the foregoing is a true and correct transcript thereof.

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EILEEN MCDONOUGH, RPR, CRR  
Official U.S. Court Reporter